

General Ethics Briefing

- **Mr. Mark F. Stone**
- **Ethics and Fraud Remedies Directorate,
AFMC Law Office, Wright-Patterson AFB**
- **Our ethics website: [http://www.afmc-pub.
wpafb.af.mil/HQ-AFMC/JA/lo/lojaf](http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/JA/lo/lojaf)**
- **May 2003**

Overview -- 12 topics

- **Conflicts of interest**
- **Financial disclosure**
- **Gifts from outside sources**
- **Gifts to superiors**
- **Government property**
- **Misuse of government position**
- **Non-Federal organizations**
- **Off-duty employment**
- **Procurement Integrity law**
- **Post-government employment**
- **Travel**
- **Miscellaneous**

Definition -- Official vs. Personal Capacity

- **Acting in your “official capacity” means you are acting on behalf of the U.S. Government.**
- **You generally may use government resources in support of activities done in your official capacity.**
- **Acting in your “personal capacity” means that you are acting as a private citizen.**
- **You generally may not use government resources to support your personal activities.**

Conflict of Interest -- Mandatory Disqualification

- **You may not participate personally & substantially (e.g., make a decision, give advice, make a recommendation) in any government matter that would affect the financial interests of:**
 - **You, your spouse, or your minor child,**
 - **Your general partner**
 - **An organization in which you are serving as an officer, director, trustee, general partner or employee, OR**
 - **An organization with which you are negotiating for employment, or have an arrangement for future employment.**

Conflict of Interest -- Discretionary Disqualification (1)

- **Your supervisor may disqualify you from participating in a government matter that affects the financial interests of:**
 - **A member of your household,**
 - **A relative with whom you have a close personal relationship, OR**
 - **An organization in which you are an “active participant” (such as committee chairperson).**

COI -- Discretionary Disqualification (2)

- **Your supervisor may disqualify you from participating in a government matter that affects the financial interests of:**
 - **A company with which you have an off-duty business relationship,**
 - **An organization in which you served within the last year as an officer, director, trustee, consultant, contractor or employee, OR**
 - **An organization in which your spouse is currently serving as an officer, director, trustee, consultant, contractor or employee.**

COI -- Discretionary Disqualification (3)

- **Balancing test.** In above situations, supervisor should allow employee to participate in the matter only if supervisor determines that government's need to have that employee participate in the matter outweighs the appearance problems that would result.
- **Supervisor who makes this judgment must be commissioned officer or civilian GS-12 or above (exception: for General Officer commanders, this determination is made by JA).**

Conflict of Interest -- Stock

- **Federal employees, including reservists, may not work on any government matter (e.g., contract, source selection or claim) that affects the financial interests of a company, if they (or their spouse or minor child) own stock in the company.**
- **Exception if value of stock owned by you, your spouse & minor children in all the companies involved in the matter is \$15,000 or less.**
- **EX: If Companies A & B are competing for govt. contract, you can work on source selection if you own 6K of stock in one & 7K of stock in the other.**

Conflict of Interest -- Government Employee's Spouse Working for Contractor

- **An Executive Branch employee may not work on a government matter involving a contractor that employs his or her spouse if:**
 - **Doing so would affect the spouse's level of compensation or continued employment with the contractor, OR**
 - **The spouse owns more than \$15,000 of the company's stock, or the spouse has a pension plan that has more than \$15,000 of the company's stock. [5 CFR 2635.402(b) (2) (Example 2)]**

Conflict of Interest -- Representing Others

- **Federal employees may not represent individuals, companies or other organizations before any Federal agency.**
 - **Applies to officers & civilians (not enlisted)**
 - **Applies if representation is compensated (18 USC 203) or uncompensated (18 USC 205)**
 - **Exception for representing certain relatives**
- **Exception: You may engage in uncompensated representation of a non-profit organization if a majority of the members are Federal employees or their spouses or children, and if certain other conditions apply. [18 USC 205(d)]**

Conflict of Interest -- Assignment of Reservists

- **A reservist may not be assigned to duties involving access to:**
 - **Information that would help his or her private employer in an ongoing or future source selection, OR**
 - **Proprietary or confidential information about the competitors of his or her private employer. [Joint Ethics Regulation (JER) para. 5-408]**

Public Financial Disclosure Report (SF 278)

- **Standard Form (SF) 278 must be completed by General / Flag Officers, SES members, and SES-equivalent employees (STs & SLs).**
- **SF 278 must be filed:**
 - **Within 30 days of entering SF 278 position (e.g., date of promotion to Brigadier General),**
 - **Each year by 15 May, and**
 - **Within 30 days after leaving position (e.g., date of retirement or resignation).**
- **\$200 penalty for filing late. [JER ¶ 7-203g]**

Confidential Financial Disclosure Report (OGE Form 450)

- **You must file OGE Form 450 (or 450A) if you are:**
 - **Colonel or below, or GS-15 & below, and your duties involve decision-making or significant judgment in contracting or procurement, OR**
 - **Colonel or below, and the commander of an AF installation, base, air station or activity.**
- **Form must be filed within 30 days after entering such a position and every Oct or Nov.**
- **IMPAC cardholders are generally not required to file OGE Form 450. [OpJAGAF 2000/38, 22 May 00]**

Financial Disclosure -- OGE Form 450A

- **OGE Optional Form 450A -- “Confidential Certificate of No New Interests” -- approved in ‘97**
- **DoD employees may file the OGE Optional Form 450A (instead of the OGE Form 450) if:**
 - **They have no new interests to be reported,**
 - **They attach copy of their last OGE Form 450, &**
 - **The calendar year is not a multiple of four, i.e., everyone must submit the OGE Form 450 in 2000, 2004, 2008, etc. [JER 7-300b(3)]**
- **DoD employees must use DoD version of 450A.**

Gifts from Outside Sources -- General Rules

- **DoD employees may not accept gifts:**
 - **Offered because of their official position, OR**
 - **From a “prohibited source” (such as a DoD contractor).**
- **There are 30 exceptions (actually 9 items excluded from the definition of a “gift” and 21 exceptions).**
- **Gifts to relatives -- because of their relationship with you -- are considered to be gifts to you.**

Gifts -- Exclusions from the Definition of a “Gift”

- **Modest items of food and drink that are not part of a meal (such as coffee, soft drinks, donuts, hors d’oeuvres).**
- **Items with little intrinsic value that are intended solely for presentation (such as plaques, certificates and trophies).**
- **Opportunities and benefits offered to the public, to all government employees, or to all military personnel (such as the “military discount” for airlines and hotels).**

Gifts -- \$20 / \$50 Rule

- You may accept gifts up to \$20 in value at one time (but never cash or investments).**
- Gifts from one source (e.g., one company) can't exceed \$50 in value in a calendar year.**
- You may not “buy down” to \$20, i.e., pay \$5 and then accept a gift worth \$25.**
- The \$20 limit is per occasion and per source. For example, at a trade show you may accept gifts worth \$20 or less from several different contractors on the same day.**

Gifts -- Widely Attended Gathering Rule

- **An employee may accept free attendance at an event (conference, seminar, dinner, reception) if:**
 - **A large number of persons (20 or more) are expected to attend the event,**
 - **The employee's attendance would further agency (i.e., DoD or Air Force) programs or operations,**
 - **Attendees have diversity of views or interests, &**
 - **The gift is from the sponsor of the event (or a non-sponsor under certain circumstances).**

Gifts -- Social Invitations from Other Than Prohibited Sources

- **An employee may accept food, refreshments and entertainment at a social event, if**
 - **The event is attended by several persons,**
 - **The invitation is from a person who is not a “prohibited source,” and**
 - **No fee is charged to any person in attendance.**
- **Example: a dinner party by a community leader**
- **Travel and lodging may not be accepted under the social invitation rule. [5 CFR 2635.204(h)]**

Gifts -- Rollout / Launch Ceremonies

- **If your commander or civilian director has approved your attendance at “a ceremony to mark the completion of a milestone in shipbuilding, aircraft completion, or similar vehicle launch or rollout,” you may accept:**
 - **Free attendance at functions (reception, lunch, dinner, etc.) if not lavish or excessive, and**
 - **Gifts or mementos, if you’re official participant in the ceremony; total value does not exceed \$100 per family, and cost is not borne by US Govt.**

Gifts -- From Foreign Governments

- **You generally may keep a gift from a foreign govt., if it has a market value of \$285 or less. [AFI 51-901]**
- **Gift worth more than \$285**
 - **Personal property items belong to government.**
 - **Travel expenses can accepted with CC approval.**
- **If foreign government is engaged in selling to DoD, you should seek advice before retaining the gift.**
- **Rules apply to active duty, reservists, civilian employees, and the dependents of each.**

“Gifts” that Result from the Expenditure of Government Funds

- **“An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.”
[5 CFR 2635.204(c)(3)]**
- **Example: If an office supply store has a policy of giving a “free” briefcase to any customer that buys \$1000 of supplies, and your government organization buys \$1000 of supplies from the store, the briefcase belongs to the government.**

Gifts -- Contest Prizes

- **There is an exclusion from the definition of a “gift” for contest prizes if:**
 - **The contest is “open to the public” in that there is no cost to enter the contest,**
 - **The contest is “open to the public” in that there is no cost to attend the event where the contest takes place, and**
 - **Entering the contest is not required by or related to the performance of the government employee’s official duties. [5 CFR 2635.203(b)(5); OGE Informal Advisory Opinions 99 X 7 and 00 X 6]**

Gifts -- Job Search Expenses

- **An Executive Branch employee may accept meals, lodgings, transportation and other benefits**
- **customarily provided by a prospective employer**
- **in connection with bona fide employment discussions. [5 CFR 2635.204(e)(3)]**

Gifts -- Based on Spouse's Activities

- **An Executive Branch employee may accept meals, lodgings, transportation and other benefits**
- **Resulting from the business or employment activities of the employee's spouse**
- **When it is clear that such benefits have not been offered or enhanced because of the employee's official position.**
[5 CFR 2635.204(e)(1)]

Gifts -- Supplementation of the Salary of a Federal Employee

- **18 USC 209 prohibits individuals from supple-menting the salary of a Federal employee, i.e., giving the employee additional compensation for the performance of official duties.**
- **Example: paying a government employee a \$100 honorarium for a speech the employee gives as part of her official duties.**
- **Gifts to Federal employees do not violate this law.**

Gifts -- To a Federal Agency

- **10 USC 2601 authorizes the Army, Navy, Air Force and Coast Guard to accept gifts. Each agency has its own regulation on such gifts.**
- **For gifts of personal property to Air Force, the approval authority is based on value of gift:**
 - **More than \$50,000 -- Secretary of Air Force**
 - **Up to \$50,000 -- MAJCOM Commander**
 - **Up to \$5000 -- all installation commanders**

Gifts -- Solicitation of Gifts by Executive Branch Employees

- **Executive Branch employees may not solicit gifts from “prohibited sources.”
[5 CFR 2635.202(a)(1)]**
- **“Prohibited sources” includes companies doing business or seeking to do business with the employee’s agency.**
- **Executive Branch employees may not solicit gifts that would be given because of their official position. [5 CFR 2635.202(a)(2)]**

Gifts to Superiors -- General Rules

- **General rule: Federal employees may not give gifts to their superiors.**
- **“Superior” means:**
 - **Your supervisor,**
 - **Your supervisor’s supervisor, and**
 - **Everyone up the chain of command.**
- **There are two exceptions: occasional gifts and special occasion gifts.**

Gifts to Superiors -- Occasional Gifts

- **Federal employees may give to a superior on an occasional basis (e.g., birthday, Boss' Day, promotion):**
 - **Item(s) worth \$10 or less (not cash),**
 - **Food and/or beverage that is shared in office,**
 - **Hospitality provided at your home,**
 - **Item(s) customarily given when receiving hospitality from your superior (e.g., bottle of wine when boss invites you to dinner),**
OR
 - **Leave transferred under Vol. Leave Transfer Program to non-supervisor (civilians only).**

Gifts to Superiors -- Special Occasions

- **“Special occasion” means infrequent & signif. personal occasions (marriage, baby, illness) or end of sup.-sub. relationship (retire, PCS).**
- **Gift from individual subordinate: no \$ limit, but must be appropriate to the occasion.**
- **Gift from a group containing subordinates**
 - **Gift is generally limited to \$300 in market value.**
 - **Can't ask govt. employees to give more than \$10.**
 - **Govt. employees may give more than \$10.**
 - **Can't ask contractor employees to give at all.**

Government Property -- Basic Rule

- **Employees shall not use government property for “other than authorized purposes.” [5 CFR 2635.704] Must look at the regulations that govern different types of government property.**
- **Use of government vehicles. [Air Force Instruction (AFI) 24-301]**
- **Use of the internet. [AFI 33-129]**
- **Use of government postage. [AF Supplement to DoD Official Mail Manual; OpJAGAF 1995/103]**

Government Property -- E-Mail

Govt. e-mail may be used for personal communications if supervisor (who is commissioned officer or GS-11 or above) determines:

- (1) No adverse effect on performance of duties,**
- (2) Use is of reasonable duration & frequency,**
- (3) Use serves a legitimate public interest,**
- (4) Use does not reflect adversely on Air Force,**
- (5) Use does not overburden the system, and**
- (6) Use does not create signif. additional cost.**

[JER ¶ 2-301a; AFI 33-119, 1 Mar 99, ¶ 3.3.2.]

Government Property -- E-Mail

Govt. e-mail may not be used for the following:

- (1) Sending items in violation of copyright laws**
- (2) Sending e-mail for personal financial gain**
- (3) Misrepresenting your identity or affiliation**
- (4) Sending harassing or offensive material, including humor in poor taste, political or religious lobbying, or pornographic items**
- (5) Using someone else's userID w/o authority**
- (6) Causing congestion on the network**

[JER ¶ 2-301a; AFI 33-119, 1 Mar 99, ¶ 3.3.1.]

Government Property -- Reservists and Guard Members

- **On 4 Jan 99, the Comptroller General issued an opinion stating that Federal agencies may permit their employees who are Reservists or Guard members to use a limited amount of official time and agency resources to support the Reserves or Guard, subject to supervisor's approval. [Comp. Gen. Decision B-277768]**
- **OPM has drafted guidelines on how much time and what types of resources may be used for these purposes, and under what circumstances.**

Government Property -- Use of Appropriated Funds (Fiscal Law)

- **Air Force Instruction 65-601, Budget Guidance and Procedures, Volume 1, 24 Dec 02, has guidance on using appropriated funds to pay for:**
 - **Honoraria for guest speakers (para. 4.9)**
 - **Invitations and programs for retirement and change of command ceremonies (para. 4.27)**
 - **Gifts for non-govt. employees (para. 4.29)**
 - **Seasonal greeting cards (para. 4.36.2)**
 - **Light refreshments at conferences (para. 4.42)**
 - **Memberships in prof. organizations (para. 4.44)**

Government Property -- Business Cards

- **Government funds may not be used to buy business cards (with one exception - for military recruiters). This rule applies to:**
 - **Appropriated funds [AFI 65-601]**
 - **Official representation funds [AFI 65-603]**
 - **Non-appropriated funds [AFI 34-201]**
- **Air Force employees may use the government printer to print business cards under certain conditions. [AFI 65-601, Vol I, para. 4.36.1; DoDD 5330.3, AF Supp. dated 18 Feb 99, para. 5.3.1.2.]**

Misuse of Position -- Government Time

- **DoD employees must use official time to perform official duties. [5 CFR 2635.705(a)]**
- **DoD employees may not ask or direct their subordinates to use official time for other than official duties. [5 CFR 2635.705(b)]**

Misuse of Position -- Letters of Recommendation

- **When writing a letter of recommendation (or a character reference), you may use official stationery and may sign using your official title, only if the letter is based upon your personal knowledge of the ability or character of:**
 - **An individual with whom you have dealt in the course of Federal employment, OR**
 - **An individual whom you are recommending for Federal employment. [5 CFR 2635.702(b)]**

MOP -- Letters of Appreciation to Contractors

- **Appropriated fund contracts - AFI 36-1004 states that it is DoD policy to not recognize private citizens or private entities that have a commercial or profit making relationship with the Department, unless the contribution is substantially beyond that specified or implied in the terms of the contract, or the recognition is in the public interest.**
- **NAF contracts - AF Manual 64-302, 3 Nov 00, para. 1.2 says: “Letters of appreciation to contractors for performance associated with a specific contract or program sponsored by the NAFI are allowable as long as such letters do not imply or infer the contractor’s products or services are promoted or endorsed by the NAFI.”**

Misuse of Position -- Disclosure of Non-Public Information

- **Employees may not disclose non-public information:**
 - **To further their own private interests, OR**
 - **To further the private interests of another.**
- **“Non-public information” means information the employee gains by reason of Federal employment, and that he or she knows (or reasonably should know) has not been made available to the general public. [5 CFR 2635.703]**

Non-Federal Organizations (NFO)

--

Three Ways for Employees to Participate

- **Serving in a management position (officer, director or trustee) in an official capacity**
 - **Requires approval by DoD/GC. [JER 3-202]**
 - **Disfavored for conflict of interest reasons, unless authorized by law. [DoD/GC Ltr, 8 Jun 95]**
- **Serving as a DoD Liaison in your official capacity - requires approval by commander. [JER 3-201a]**
- **Serving in a mgmt. position or as a member in your personal capacity - no approval required. [JER 3-301]**

Non-Federal Org.s -- Management Positions

- **DoD employees may participate, in their official capacities, in the management of:**
 - **Entities that regulate military health care, international athletic competitions, or the athletic programs of the service academies,**
 - **Entities that promote understanding between US forces abroad & citizens of host foreign nations,**
 - **Entities that accredit the service academies, &**
 - **Military relief societies. [10 USC 1033 & 1589]**
- **Must be approved by SECDEF & Service Secretary (AF appointments published in 16 Mar 00 Fed Reg)**

NFOs -- Serving as a DOD Liaison

- **If the commander wants to have a representative at meetings of a non-Federal organization on a regular basis, he or she may appoint an employee as a DoD Liaison to the organization.**
- **Before appointing a DoD Liaison, commander must determine that having a DoD Liaison would serve a significant & continuing DoD interest.**
- **DoD Liaisons serve as “the eyes and ears” of the commander; they perform their liaison functions as part of their official duties, and thus can use government resources in doing so.**

Non-Federal Organizations -- Participation in a Personal Capacity

- **You may participate in a non-Federal organization as a member or in a management position (officer, director or trustee), in your personal capacity, if you act outside scope of your official position. No approval is required. [JER 3-301]**
- **Exception: You may not serve in a management position in a non-Federal organization in your personal capacity, if the position is offered to you because of your DOD assignment or position. [JER 3-301]**

NFOs -- Providing DoD Employees as Speakers at Non-Federal Organization Events

- **A DoD organization may provide an employee as a speaker at an event sponsored by a non-Federal organization if seven criteria are met. [JER 3-211a] The two key criteria are:**
 - **The DoD organization is willing to provide speakers for events by other organizations (i.e., can't give preferential treatment).**
 - **The admission fee is reasonable, or DoD's support to the event is incidental.**

NFOs -- Government Agencies Providing Assistance to Private Companies (Tech Transfer)

- **Government property may be used only for authorized purposes. [5 CFR 2635.704]**
- **Federal statutes, DoD regulations, and Air Force regulations authorize the provision of manpower and materials to private companies under certain circumstances, if it will promote or accomplish “technology transfer.” [See Air Force Policy Directive 61-3; Air Force Instruction 61-301]**

Non-Federal Organizations -- Serving as Advisor to Defense Contractor

- **On 5 Aug 96, DoD/GC issued memo stating that “DoD employees may not serve in any way as advisors to defense contractors or entities that seek to do business with DOD.” No distinction was made between official & personal capacities.**
- **On 7 May 99, DoD/GC issued a memo on the same subject that “supersedes” the 5 Aug 96 memo.**
 - **Employees may not serve as advisors to defense contractors in their official capacity.**
 - **Employees may do so in personal capacity, if it complies with 12 conditions listed in the memo.**

NFOs -- Customer Surveys from Contractors

- **Before responding to a customer survey from a contractor (or agent thereof), you must consider:**
 - **Would responding violate the DoD policy that prohibits you from serving as an advisor to a defense contractor in your official capacity?**
 - **Would responding violate AFI 36-2601, para. 3.8, which says commanders will not permit private organizations to conduct surveys of Air Force personnel without authorization by HQ AFPC?**
 - **Would responding give an unfair advantage to the contractor in an upcoming procurement?**
 - **Would responding violate the ban on govt. employees giving preferential treatment?**

Non-Federal Organizations -- Service by General or Flag Officer as Officer or Board Member for Compensation

- **General / Flag Officers may not accept compensation for serving as an officer or board member of a non-Federal organization. [DepSecDef Ltr, 23 Jul 96]**
- **Exception for professional associations & family entities -- requires SECAF approval.**
- **May accept travel expenses to attend Directors meetings. [HQ USAF/JAG Ltr, 30 Jul 96]**

Using Your Official Title & Organization Name -- In Your Official Capacity

- **If you will participate in a non-Federal organization event in your official capacity (i.e., as part of your official duties), you may allow the organization to use your official title and organization name in connection with that activity. [JER 3-209]**
- **Example: If you will be a speaker at a non-Federal organization conference as part of your official duties (e.g., while TDY), you may allow the organization to mention your official title and organization name in the conference materials.**

Using Your Official Title & Organization Name -- In Your Personal Capacity

- **If you will speak at a non-Federal organization event in your personal capacity (i.e., as a private citizen), you may not allow the organization to use your official title and organization name in the materials for the event unless:**
 - **Your official title and organization name are included along with several other biographical details, and**
 - **Your official title and organization name are not given more prominence than other significant biographical details. [5 CFR 2635.807(b)(1)]**

Active Duty Military Members Referring to Their Rank & Branch of Service

- **Active duty military members may always refer to (and allow a non-Federal organization to use) their rank & branch of service when participating in non-Federal organization activities (whether they are participating in their official or personal capacities). [JER 3-300a(1)]**
- **Example: When Col Smith makes a speech at a non-Federal organization conference in a personal capacity, the conference program:**
 - **May say: “ Colonel John Smith, US Air Force”**
 - **May not say: “Col Smith, Director, F-16 SPO”**

Reservists & Military Retirees Referring to Their Rank & Branch of Service

- **Reservists.** Reservists may use their military titles (i.e., rank & branch of service) in connection with commercial enterprises provided they clearly indicate their inactive Reserve status. [JER 2-304]
- **Military retirees.** Retirees may use their military titles in connection with commercial enterprises provided they clearly indicate their retired status. [JER 2-304]

Notifying Other DoD Employees about Non-Federal Organization Events

- You may not officially endorse non-Federal entities, or their products, services or events. [JER 3-209]**
- You may use official channels to notify other DoD employees of events of common interest sponsored by non-Federal organizations. [JER 3-208]**
- On 28 May 96, DoD/GC issued a memo stating that in drafting notification letters, “all words of praise for any non-Federal entity or event should be avoided,” and words such as endorse, support, recommend and urge should not be used.**

Off-Duty Employment (ODE) -- Approval

- **DoD employees must get prior approval of ODE if they file a financial disclosure report and if they will work for a “prohibited source” (such as a DoD contractor). [JER 2-206a]**
- **ODE can be disapproved only if it is prohibited by statute or regulation, would detract from readiness, or would create a security risk. [JER 2-206, 2-303]**
- **AF employees use AF Form 3902 to get approval.**
- **All AFMC employees (military & civilian) must get prior approval of ODE. [AFMC Instruction 51-201]**

Off-Duty Employment -- 18 USC 208

- **You may not participate personally & substantially (e.g., make a decision, give advice, make a recommendation) in any government matter that would affect the financial interests of:**
 - **You, your spouse, or your minor child,**
 - **Your general partner**
 - **An organization in which you are serving as an officer, director, trustee, general partner or employee, OR**
 - **An organization with which you are negotiating for employment, or have an arrangement for future employment.**

Off-Duty Employment -- Govt Employees Receiving Govt Contracts

- **Federal contracts (using appropriated funds) may not be awarded to:**
 - **A government employee, or**
 - **A business concern or other organization owned or substantially owned or controlled by one or more govt employees. [FAR 3.601]**
- **Air Force contracts or leases that are funded solely with nonappropriated funds may be awarded to military personnel, government employees, or business organizations substantially owned or controlled by them. [Air Force Manual 64-302, para. 11.11]**

Off-Duty Employment -- Teaching, Speaking & Writing Rule

- **DoD employees may not receive compensation for teaching, speaking or writing in their personal capacity if:**
 - **It's done as part of their official duties,**
 - **They're invited because of their official position or the invitation is from a "prohibited source,"**
 - **The activity draws on non-public information,**
 - **Subject deals with a matter they're assigned to now or during the previous 1-year period, OR**
 - **Subject deals with any announced or ongoing DoD policy, program or operation. [5 CFR 2635.807(a)]**

ODE -- Teaching, Speaking & Writing Rule

- **The compensation ban does not apply to:**
 - **Teaching course requiring multiple presentations at elementary/secondary school or college, OR**
 - **Teaching, speaking or writing on a subject within your discipline or inherent area of expertise, based on educational background or experience.**
- **The ban does not prohibit you from accepting:**
 - **Meals furnished as part of the event,**
 - **Course materials furnished as part of the event,**
 - **A waiver of the fee to attend the event, OR**
 - **Travel expenses. [5 CFR 2635.807(a)(2)(iii)(D)]**

Off-Duty Employment -- Working Part-Time For a Foreign Govt.

- **Military officers & enlisted personnel may not work for a foreign government. [AFI 36-2913]**
- **Federal civilian employees may not work for a foreign government without the consent of Congress. [6 Op. O.L.C. 156 (1982)]**
- **These rules also apply to working for educational or commercial institutions owned, operated or controlled by a foreign government.**

Off-Duty Employment -- Business Ventures with Subordinates

- **Air Force members generally should not enter into business ventures with members who are junior in rank, grade or position. [AFI 36-2909, Professional and Unprofessional Relationships, 1 May 99, para. 3.7.]**
- **Air Force civilian employees generally should not enter into business ventures with their supervisor or with employees under their supervision. [AFI 36-703, Civilian Conduct and Responsibility, 1 Aug 99, para. 8.2.3.]**

The Procurement Integrity Law -- The Four Basic Provisions

- **Ban on disclosing procurement information**
- **Ban on obtaining procurement information**
- **Requirement to report employment contacts**
- **The 1-year ban on accepting compensation from a contractor that was awarded a contract over \$10,000,000**

Proc. Integ. Law -- Ban on Disclosing Procurement Information (41 USC 423(a))

- **The Procurement Integrity law prohibits, before contract award, the disclosure of:**
 - **Source selection information, &**
 - **Contractor bid or proposal information**
- **The ban applies to:**
 - **Current and former Federal employees, &**
 - **Anyone who is advising or has advised the U.S. Govt. regarding the procurement (i.e., contractor employees & consultants).**

Procurement Integrity Law -- Ban on Obtaining Procurement Information (41 USC 423(b))

- **The Procurement Integrity law states that a person may not knowingly obtain “source selection information” or “contractor bid or proposal information” before contract award, other than as provided by law.**
- **The ban applies to everyone, including Federal employees and contractor employees.**

Proc. Integ. Law -- Employment Contact Reporting Rule (41 USC 423(c))

If an employee (officer, enlisted or civilian) is --

- Participating personally & substantially in a procurement, and**
- Contacts, or is contacted by, a bidder or offeror regarding possible employment,**

then the employee must --

- Give written report to supervisor & Designated Agency Ethics Official or designee, and**
- Either (1) reject the possibility of employment, or (2) be disqualified from working on procurement until job discussions end & there is no arrangement for employment.**

Proc. Integ. Law -- Employment Contact Reporting Rule (41 USC 423(c))

- **Rule applies only to contracts in excess of simplified acquisition threshold (i.e., \$100,000).**
- **Rule applies only between date when bids or proposals are received & contract award date.**
- **Rule applies to contacts with “bidders” & “offerors”.**
- **A company is not a “bidder” or “offeror” until it submits a bid or offer.**

Procurement Integrity Law -- 1-Year Compensation Ban (41 USC 423(d))

- **People who serve in one of seven positions, or who make one of seven types of decisions, on a contract over \$10 million, may not accept compensation from the contractor for 1 year.**
- **1-year ban is on accepting compensation from the contractor as an employee, consultant, officer or director.**
- **Ban can apply to officers, enlisted & civilians.**

Procurement Integrity Law -- Positions Resulting in 1-Year Comp. Ban

- **Procuring Contracting Officer**
- **Source Selection Authority**
- **Member of Source Selection Evaluation Board**
- **Chief of financial or technical evaluation team**
- **Program Manager**
- **Deputy Program Manager**
- **Administrative Contracting Officer**

Procurement Integrity Law -- Decisions Resulting in 1-Year Comp. Ban

- **Decision to award a contract over \$10 million**
- **Decision to award a subcontract over \$10 million**
- **Decision to award a modification that is over \$10 million of a contract or subcontract**
- **Decision to award a task order or delivery order over \$10 million**

Procurement Integrity Law -- Decisions Resulting in 1-Year Comp. Ban

- **Decision to establish overhead or other rates applicable to a contract or contracts valued over \$10 million**
- **Decision to approve issuance of a contract payment or payments over \$10 million**
- **Decision to pay or settle a claim over \$10 million**

Procurement Integrity Law -- When 1-Year Comp. Ban Starts

- **For PCO's, SSA's, SSEB members, & evaluation team chiefs, ban starts on date of contract award.**
 - **Exception: If an individual was serving in the position on the date of contractor selection, but not on the date of contract award, the ban begins to run on date of contractor selection.**
- **For PMs, DPMs & ACOs, ban starts to run on last day of service in the position.**
- **For decisionmakers, ban starts on date of decision.**

Procurement Integrity Law -- 1-Year Compensation Ban

- **Other divisions.** The 1-year ban does not apply to accepting compensation from any division or affiliate of the contractor that does not produce the “same or similar products or services” as the entity of the contractor that has the contract that you worked on.
- **Legal opinion.** Individuals can request an opinion on whether the ban applies (a “30-day letter”). The opinion must be issued within 30 days after receipt of a written request (or as soon thereafter as practicable).

Post-Government Employment - The Basic Job Hunting Rule

- **If you are participating personally & substantially in a “particular matter” that has a direct and predictable effect on a company’s financial interests, then you may not seek employment with the company. [5 CFR 2635.604(a)]**
- **Examples of “particular matters”:**
 - **Government contracts,**
 - **Task orders & delivery orders,**
 - **Sale of a govt. asset to a company, or**
 - **Claim by a company against the government.**

Post-Government Employment (PGE) -- Lifetime Representation Ban

- **If a Federal employee participates personally & substantially in a contract, he may go to work for the contractor, but may never act as contractor's negotiator or representative before any Federal agency on that contract. [18 USC 207(a)(1)]**
- **Applies to officers & civilians, but not enlisted**
- **Applies to contracts & other “particular matters” (asset sales, environ. claims, personnel actions)**

PGE -- 2-Year Representation Ban

- **If a Federal employee has a contract under her official responsibility during her last year in the government, she may go to work for the contractor, but may not, for 2 years, act as contractor's negotiator or representative before any Federal agency on that contract.
[18 USC 207(a)(2)]**
- **Applies to officers & civilians, but not enlisted**
- **Applies to contracts & other “particular matters” (asset sales, environ. claims, personnel actions)**

PGE -- What is Prohibited by Lifetime & 2-Year Representation Bans

- **What is prohibited: communicating with or appearing before any Federal employee, with the intent to influence the employee, regarding the contract (or other matter) that the ban applies to.**
- **Examples:**
 - **Acting as company's negotiator**
 - **Speaking for company in contract dispute**
 - **Seeking for the company a discretionary ruling, benefit, action or approval by the govt. (e.g., a contract claim, modification, ECP, etc.)**

PGE -- What is Permitted under Lifetime & 2-Year Representation Bans

- **What is permitted: communicating with or appearing before Federal employees regarding a contract (or other matter) where there is no intent to influence (i.e., merely providing or obtaining information).**

Examples:

- **Providing purely factual information to govt. personnel regarding a contract**
- **Requesting purely factual information from govt. personnel regarding a contract**
- **Requesting from the govt. publicly available documents related to a contract**

PGE -- One-Year No Contact Rule

- **“Senior employees” may not, for 1 year, communicate with, or appear before, any employee of their former agency, on behalf of a third party, in connection with any matter on which the third party seeks official action by their former agency.**
- **The rule (18 USC 207(c)) applies to:**
 - **General / Flag Officers (O-7 to O-10),**
 - **SES employees at Levels 5 & 6, and**
 - **SES-equivalent employees (e.g., ST & SL) whose basic rate of pay (excluding locality-based pay) is equal to or greater than basic pay of SES Level 5.**

PGE -- 1-Year Ban on Advising Foreign Entities (18 USC 207(f))

- **“Senior employees” may not, for 1 year:**
 - **Represent a foreign entity before any Govt. agency with intent to influence a decision by that agency, OR**
 - **Aid or advise a foreign entity with intent to influence a decision by a U.S. Govt. agency.**
- **“Foreign entity” means foreign government or foreign political party; “senior employee” has same definition as for 1-year no-contact rule.**

PGE -- Retired Military Members Working for a Foreign Government

- **Retired Air Force (AF) officers & enlisted may not work for a foreign government without prior approval by AF Personnel Center. [AFI 36-2913]**
 - **Applies to reservists receiving retired pay**
 - **Applies to educational & commercial institutions owned or controlled by foreign govt.**
- **On 4 Feb 99, HQ AFPC/DPPTU advised that requests for approval will not be accepted until requester has an approved retirement date, and approval can take up to one year (about a month by Air Force and 6-12 months by the State Dept).**

Senior Retirees Working for Contractors

- **“If retired senior officials visit an installation in their personal capacities, they may be afforded those courtesies normally shown to visiting retired senior officials. However, if they are visiting on business, they must be treated in the same manner as everyone else who is either seeking business or doing business with the installation.” [DoD Standards of Conduct Office Advisory 97-10]**
- **“Example: If the retiree is visiting the installation as a representative of a contractor, DoD may provide only the assistance it would provide to a competing contractor.”**

Travel -- Frequent Flyer Miles

- **Before 28 Dec 01, frequent flyer (FF) miles earned in official travel belonged to the govt.**
- **On 28 Dec 01, President signed FY 2002 DoD Authorization Act, which says FF miles earned in official travel may be kept for personal use.**
- **FF miles earned in official travel before, on, or after 28 Dec 01 are now employee's property.**
- **IRS Announcement 2002-18 says IRS will not assert tax liability for use of FF miles earned in official travel, unless they are converted to cash.**

Travel -- Overbooked Flights

- **Involuntary bump -- you may not keep the compensation, since it belongs to the govt.**
- **Voluntary surrender of seat**
 - **You may do this if taking the later flight would not interfere with the mission.**
 - **You may keep the compensation, if taking the later flight does not result in any additional cost to the govt, i.e., if you don't claim any extra per diem or extra costs for the additional time you're on the road.**

Travel -- Government Travel Card

- **Executive Branch employees are generally required to use the government travel card to pay for expenses of official travel. But there are 13 categories of employees who are not required to use the card, including “infrequent travelers” (those who travel two or less times per year). [DoD 7000.14-R, Vol 9, para. 030302]**
- **The government travel card must be used to pay for transportation, lodging, and rental car when on official travel. It may be used to pay for other charges associated with official travel, but it’s not required. [SECAF memo, Mandatory Travel Card Policy, 17 Apr 00, Atch 1, para. B2]**

Travel Card -- Non-Reimbursable Expenses

- **DoD Financial Mgmt. Reg. (DoD 7000.14-R), Vol. 9, Chap. 3, para. 030607, says card may be used for:**
 - **“[N]on-reimbursable incidental travel expenses such as rental movies, personal telephone calls, exercise fees, and beverages, when these charges are part of a room billing or meal and are reasonable.”**
 - **“[P]ersonal lodging or car rental charges, incurred in conjunction with otherwise authorized official travel expenses, when such charges are an inte-gral part of the billing for the period spent at the temporary duty location while on official travel.”**

Travel -- Affinity Credit Cards

- **If you have a credit card, and the credit card company has an arrangement with an airline, under which you earn frequent flyer (FF) miles for every dollar you charge on the credit card, the card is called an “affinity card.”**
- **If you have an affinity credit card, you may use it to pay for the expenses of official travel (except for transportation, lodging & rental car, which must be paid for using the government travel card). You also may keep for personal use the FF miles that result from use of the affinity card. [Comp Gen. B-270423; Air Force TJAG Policy Ltr # 8, 4 Feb 98]**

Travel -- Registration of Govt. Travel Card

- **There are sponsor companies that have arrangements with manufacturers whereby if you register your credit card with the sponsor company, and you use the credit card to buy a product from a participating manufacturer, the manufacturer will pay a percentage of the purchase price to the sponsor company, and the sponsor company will put that money into a Section 529 account for your child. A Section 529 account is a savings account for your child's education which has tax advantages. Air Force employees may register their government travel cards with such sponsor companies, and may retain the resulting benefits. [Opinion of the Air Force Judge Advocate General 2002/2, 25 Jan 2002]**

Upgrades on Official Travel -- When the Government Will Pay for It

- **First class accommodations allowed only when:**
 - **No other accommodations are reasonably available (within 24 hours of the required arrival / departure time).**
 - **The employee is so physically impaired that other accommodations cannot be used, OR**
 - **Exceptional security circumstances exist.**
- **Premium class other than first class (I.e., business class) accommodations are allowed in the nine situations listed in JFTR / JTR.**

Upgrades on Official Travel -- When You May Accept Them as a Gift

- **You may upgrade to first class or business class on government travel if it is:**
 - **Because of membership in club (such as Gold Card Club) for people with certain number of miles (even if all miles are from govt. travel),**
 - **A promotional offer (such as for opening a new frequent flyer account), OR**
 - **An on-the-spot upgrade. [JER para. 4-202]**
- **But you may not accept upgrade based on rank.**

Upgrades on Official Travel -- Buying Them with Personal Funds or Miles

- **Federal employees may use personal funds to upgrade to first class or business class while on official travel. [OMB Memo, "Clarification of First Class Travel Policies," 19 Sep 94]**
- **Federal employees may use personal frequent flyer miles to upgrade to first class or business class while on official travel. [HQ USAF/JAG Memo, "Travel Upgrades," 9 Jan 95]**
- **Air Force policy prohibits military members from wearing the uniform in first class.**

Gifts of Travel -- Authority for Accepting

- **Three statutes that authorize Federal government agencies to accept gifts of travel expenses are:**
 - **31 USC 1353 -- travel payments from non-Federal sources**
 - **5 USC 7342 -- gifts from foreign governments**
 - **10 USC 2601 -- gifts to Army, Navy, Air Force**
- **If the gift can be accepted under provisions of 31 USC 1353, it must be. If gift cannot be accepted under 31 USC 1353, you look to see if it can be accepted under another statute.**

Travel Payments from Non-Federal Sources (31 USC 1353) -- General Rules

- **You may accept a travel payment from a non-Federal source if all of the following are true:**
 - **The payment is in connection with a meeting or function that relates to your official duties.**
 - **The function will take place away from your duty station.**
 - **You will attend function in an official capacity.**
 - **The payment would not cause a reasonable person to question integrity of DoD operations.**
 - **Acceptance of the payment is approved by your travel-approving authority before travel begins.**

Travel Payments from Non-Federal Sources -- Definitions

- **“Non-Federal source” means any person or entity other than the U.S. Government. It includes private companies, nonprofit organizations, state governments, and foreign governments.**
- **“Travel payments” that can be accepted include:**
 - **Airfare**
 - **Hotel accommodations**
 - **Rental car**
 - **Waiver of conference registration fee.**

Travel Payments from Non-Federal Sources -- When You May Accept

- **You may accept travel payments from a non-Federal source under 31 USC 1353 to attend:**
 - **An event where you will participate as a speaker or panel member,**
 - **A conference, seminar or similar event where you will receive training, OR**
 - **An event where you will receive an award or honorary degree.**

Travel Payments from Non-Federal Sources -- When You May Not Accept

- **You may not accept a travel payment from a non-Federal source under 31 USC 1353 to attend:**
 - **A meeting that is required to carry out the statutory or regulatory functions of your agency (e.g., audits, inspections, site visits, negotiations, litigation), OR**
 - **Promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.**

Travel Payments from Non-Federal Sources -- Accompanying Spouse

- **A Federal agency may accept a travel payment from a non-Federal source for an accompanying spouse, if the spouse will:**
 - **Support the mission of the agency or assist the employee in carrying out official duties,**
 - **Attend a ceremony where the employee will receive an award or honorary degree, OR**
 - **Participate in substantive programs related to the agency's programs or operations.**

Travel Payments from Non-Federal Sources -- Reporting the Payments

- **Payments are gift to agency and are not reported on financial disclosure form (e.g., OGE Form 450).**
- **If you receive over \$250 in benefits for any one event, must do written report of benefits received.**
- **You may report travel benefits on the SF 326. Use of SF 326 is mandatory for Air Force personnel.**
- **SF 326 can be printed directly from GSA website - <http://www.gsa.gov/forms/>**

Travel Payments from Non-Federal Sources -- Miscellaneous Rules

- **You may not accept cash or a check payable to you. The payment must be:**
 - **A check payable to your agency, OR**
 - **An in-kind payment (such as a plane ticket).**
- **You may not accept a gift of travel payments under 31 USC 1353 for permissive TDY travel.**
- **If the travel payment can be accepted under 31 USC 1353, it must be accepted under that authority, and not any other law or regulation.**

Gift of Travel From Foreign Government

- **Under the Foreign Gifts and Decorations Act, you may accept a gift of travel or travel expenses from a foreign government, for travel taking place entirely outside the United States, if accepting the gift is:**
 - **Appropriate,**
 - **Consistent with the interests of the U.S., and**
 - **Permitted by your agency. [5 USC 7342]**

Accepting Travel as a Gift to the Agency

- **10 USC 2601 authorizes the Army, Navy, Air Force and Coast Guard to accept gifts.**
- **Another possible way to accept a gift of travel is to accept it as a gift to your agency.**
- **To accept a gift of travel as a gift to the agency, it must be accepted in accordance with the agency's gift acceptance procedures that implement 10 USC 2601.**

Accepting Travel as a Gift to the Agency -- Examples

- **Examples of travel expenses that can be accepted as a gift to the agency include:**
 - **Travel expenses of flight crews who fly government aircraft at international air shows,**
 - **Travel expenses of employees who attend ceremonial events to enhance public relations (such as military bands), OR**
 - **Travel expenses offered after travel has begun (since they can't be accepted under 31 USC 1353).**

Benefits from Inconvenience During Travel

- **The Comptroller General has ruled that, where a Federal employee on official travel suffered a five-hour flight delay, and the airline gave him a free round-trip ticket, the ticket belongs to the govt.**
- **The Comptroller General has ruled that, where a Federal employee on official travel was denied lodging at a hotel where she had a reservation because it was overbooked, and the hotel gave her a coupon for one free night of lodging, the coupon belongs to the government.**
- **But you may keep compensation the airline pays for lost or delayed luggage. [JTR para. C1200]**

Travel -- Travel in Contractor Vehicles

- **If the transportation is duty-related (I.e., received in connection with official duty & having the effect of reducing govt. expenditures), it is gift to the agency, not to the individual. The government generally should not accept such travel unless:**
 - **It is permitted in the terms of the contract,**
 - **Govt. has agreed to reimburse the contractor, or**
 - **Acceptance was approved in advance under statutory gift authority. [OGE opinion 98 X 8]**
- **If contractor offers travel after working hours, it would be gift to the individual & could potentially be accepted under \$20 / \$50 rule. [OGE opinion 98 X 8]**

Government Employees and Contractor Employees Riding in Same Vehicle

- **On 1 Nov 00, HQ USAF/JAG issued an opinion that:**
 - **Govt. employees and Advisory & Assistance Services (A&AS) contractor employees may ride in the same vehicle when traveling to the same destination on official business.**
 - **If A&AS contractor employee offers “personal travel” to a govt. employee (i.e., travel the govt. would not pay for, such as travel for sightseeing in the evening during a TDY), the “personal travel” may be accepted only if allowed by rules on gifts.**

Government Employees and Contractor Employees Riding in Same Vehicle

- **The 1 Nov 00 HQ USAF/JAG opinion also said that:**
 - **Govt. employees and A&AS contractor employees may not be required to ride together.**
 - **Where the travel is pursuant to a fixed price contract (with no provision for direct reimbursement of contractor transportation expenses), government employees & contractor employees generally may not ride together.**

Miscellaneous -- Anti-Discrimination Policy of the U.S. Government

- **Federal agencies & Federal employees may not discriminate, agree to discriminate, or require others to discriminate, based on race, color, religion, sex, or national origin.**
- **This policy is administered by the Office of Antiboycott Compliance, which is part of the Department of Commerce.**

Miscellaneous -- Anti-Discrimination Policy of the U.S. Government

- **Example. If the Air Force will have a mission involving travel to a foreign country, it is not permissible to exclude individuals from participating in that mission:**
 - **Based on their nationality, or**
 - **Based on the fact that they have a surname that is associated with a certain nationality.**

Miscellaneous -- Fundraising Rules

- **A DoD employee may engage in fundraising in his or her personal capacity, but when doing so, he or she may not:**
 - **Personally solicit funds or other support from subordinates,**
 - **Personally solicit funds or other support from DoD contractors, OR**
 - **Use (or permit the use of) his or her govt. title or position or authority to further the fundraising effort (but using or allowing others to use your military rank and branch of service is permissible). [5 CFR 2635.808(c)]**

Miscellaneous -- Sales to Junior Personnel (JER para. 5-409)

- **DoD employees, including reservists, may not knowingly solicit, or make solicited sales to, personnel junior in rank, grade, or position, or their family members, on or off duty.**
- **If there is no coercion or intimidation by the senior employee, the following is permitted:**
 - **Retail sales made during off-duty employment,**
 - **Sale or lease of non-commercial personal or real property (such as a car or house), and**
 - **Sales made because junior approaches senior.**

Miscellaneous -- Wearing the Uniform

- **Air Force members, including reservists, may not wear the uniform when furthering:**
 - **Political activities,**
 - **Private employment, or**
 - **Commercial interests. [AFI 36-2903, Table 1.3]**
- **Within AFMC, it is not permissible to allow military members to wear civilian clothing instead of the uniform in exchange for a monetary contribution as a means of raising funds for any cause. [AFI 36-2903, AFMC Supplement, Table 1.3]**

Miscellaneous -- Political Activities

- **Military members have one set of rules on participating in political activity. These are in DoD Directive 1344.10 and Air Force Instruction 51-902.**
- **Federal civilian employees have another set of rules on participating in political activity. These are in the Hatch Act & its implementing regulations.**
- **Federal civilian employees may not solicit political contributions from government contractors or their employees. [5 CFR 734.303(a)]**

Miscellaneous -- Anti-Lobbying Rules

- **18 USC 1913 states that appropriated funds may not be used to favor or oppose any legislation or appropriation pending before the Congress.**
- **The DOJ has interpreted the statute as prohibiting substantial “grass roots” lobbying, i.e., an appeal by a government organization to members of the public to contact legislators in order to influence pending legislation or appropriations.**
- **Also, every year the DoD appropriations act has provisions against lobbying.**

Miscellaneous -- Endorsement

- **Federal employees may not use their government title or organization name to endorse a non-Federal organization, or its products, services, events, or enterprises. [5 CFR 2635.702(c); JER para. 3-209]**
- **Examples of potential violations:**
 - **Giving a contractor a quotation to use in its annual report or other literature,**
 - **Writing the forward to a book, OR**
 - **Making positive statements about a professional association in an advertisement for that association.**